(3)

IN THE HIGH COURT OF JUDICATURE OF CHHATISGARH AT BILASPUR

W.P.NO. 1172 OF 2002

PETITIONER : Sachin Sharma S/o Bhuvan Lal Sharma, aged about 25 Years, Occupation-Contractor Permanent R/o Nahar Colony Janjgir, presently residing at Dayalband, Bilaspur (C.G.)

V E R S U S

RESPONDENTS :

1. State of Chhattisgarh through The Secretary Department of Commercial Tax (Excise) Mantralaya, D K S Bhawan, Raipur (Chhattisgarth)
2. Commissioner – Excise, Chhattisgarh, Raipur (CG)
3. Collector (Excise) Bilaspur (Chhattisgarh)
4. Assistant Commissioner-Excise, Bilaspur (Chhattisgarh)

P. R. No. 1196/02
Presented by Shri Neeraj Thakur
dated 19.06.02

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN NATURE OF CERTIORARI, MANDAMUS PROHIBITION AND OTHER SUITABLE WRIT OR WRITS, DIRECTION OR DIRECTIONS, ORDER OR ORDERS:

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

W.P. No. 1172/02

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	21/6/2002 Shri Manindra Shrivastava, Advocate with Shri Ashish Shrivastava, Advocate for the petitioner. Dr. N.K. Shukla, Addl. Advocate General, with Shri Sanjay K. Agrawal, Dy. Advocate General, for the State. Shri Dhirendra Mishra, Advocate appears for Intervener Haris and has filed I.A.No. 3935/2002. Shri Thakur, Dy. Commissioner, Excise, is also present with the record. Heard. This petition has been filed by the petitioner under Article 226 of the Constitution of India, alleging that though the petitioner was the highest tenderer but his tender has not been accepted illegally and he has been subjected to selective discrimination and his offer has not been accepted and the respondents have proceeded to have new auction by inviting fresh tenders in respect of Chucuhiyapara country liquor shop. It is alleged that even proper information has not been given to the petitioner and proper publication of the notice was not made.	

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मामला क्रमांक ..... सन् 200

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —२—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Notices were given to the respondents, who have filed their reply and relevant record was produced. The contention of the respondents is that they have reauctioned the aforesaid country liquor shop, as the price offered was not up to the expectation.

Notice dated 18.6.2002 which is in the record produced by the State counsel goes to show that the Additional Collector (Excise) invited tenders up to 3.00 p.m. on 19.6.2002 and the tenders were to be opened on the same day at 3.30 p.m. It will be apt to reproduce this notice.

कार्यालय कलेक्टर आबकारी बिलासपुर

निविदा सूचना

बिलासपुर दिनांक 18.6.2002

सर्वसाधारण की जानकारी एवं आबकारी के फुटकर ठेकेदारों की विशेष जानकारी के लिए यह सूचना प्रकाशित की जाती है कि बिलासपुर जिले की देशी मदिरा दुकान चुचुहियापारा का पुनः व्यवस्थापन करने हेतु वर्ष की शेष अवधि दिनांक 20.6.2002 से 31.3.2003 तक की अवधि के लिये दिनांक 19.6.2002 को अपरान्ह 3.00 बजे तक सीलबन्द लिफाफे में संक्षिप्त टेण्डर आमंत्रित किये जाते हैं । प्राप्त टेण्डर उसी दिन 3.30 बजे कलेक्टर बिलासपुर द्वारा खोले जावेंगे । उच्चतम निविदाकार को निविदा

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 3 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

खुलने के तत्काल बाद निर्धारित प्रतिभूति राशि एवं 01 माह की लायसेंस फीस जमा करना अनिवार्य होगा । उच्चतम निविदाकार द्वारा उक्त राशि जमा नहीं करने की स्थिति में द्वितीय निविदाकार से प्रतिभूति एवं लायसेंस फीस जमा कराकर उसके पक्ष में निविदा स्वीकृत करने पर विचार किया जा सकता है । दुकान का विवरण निम्नानुसार है :

क0	दुकान का नाम	प्रत्याभूत की मात्रा पू.ली.में	डयूटी की राशि	लायसेंसफीस की राशि	कुल मूल्य
01	चुचुहियापारा	191819	9207312	9207338	1,84,14,650

सही
अपर कलेक्टर
बिलासपुर छ0ग0

पृ0क0/आब0/ठेका/2002–03/2305

बिलासपुर, दिनांक 18/6/2

प्रतिलिपिः–

1 सचिव छ0ग0 शासन वित्त एवं वाणिज्यिक कर विभाग रायपुर को सूचनार्थ

2 आबकारी आयुक्त छत्तीसगढ रायपुर को सूचनार्थ ।

3 आयुक्त जनसम्पर्क (प्रकाशन विभाग) पचपेडी नाका रायपुर को सूचनार्थ भेजकर अनुरोध है कि सभी प्रकार के समाचार पत्रों में प्रकाशन कराने का कष्ट करें ।

4 नोटिस बोर्ड कार्यालय कलेक्टोरेट बिलासपुर/समस्त अनुविभागीय अधि0 राजस्व/समस्त तहसीलदार/आयुक्त नगर निगम बिलासपुर/नगर

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —4—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

पालिका परिषद मुंगेली/कार्यालय सहायक आयुक्त आबकारी बिलासपुर में चस्पा करने हेतु ।

सही
अपर कलेक्टर
बिलासपुर,छ0ग0

Vide endorsement No.3 this notice was also sent to the Commissioner Public Relations for getting it published in daily newspapers. It is stated that Commissioner Public Relations could not get it published since it was sent on 18.6.2002. Learned State counsel submitted that according to the practice auction can be held even with the notice of 24 hours. Even if auction can be held within 24 hours, but in that event actual 24 hours must be given from the time of publication. The publication of the notice is required with the abode object so that all those who are concerned and interested should know the publication. In the instant case the endorsement No.3 shows that the publication was thought necessary and it is for this reason that it was sent to the Commissioner Public Relations. If it was so urgent the authority should have contacted the Commissioner

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 5 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Public Relations or the competent authority on phone, fax or otherwise and impressed upon him that the publication is urgently required and prompt steps be taken. In the opinion of this Court whatever procedure is adopted, the authorities proposed must follow that it should be transparent, fair and open to all. The Apex Court in (1997) 1 SCC 53 (Dutta Associates Pvt. Ltd. Vs. Indo Merchantiles Pvt. Ltd & others) has held that the decision making process should be transparent, fair and open. Accordingly the process should be transparent, fair and open and it should not only remain on paper as has been done in the instant case. It ought to have duly published. The Apex Court in a decision reported in A.I.R. 1996 SC 11 (Tata Cellular Vs. Union of India) has held that "*The principles of judicial review would apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favoritism. However, there are inherent limitations in exercise of that power of judicial review*

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —6—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Art.14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Art.14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down." Since in the present case proper publication has not been made and even proper opportunity to the persons concerned has not been given the notice dated 18.6.2002 is not sustainable and it deserves to be quashed.

The matter relates to Excise and State is also concerned in getting more revenue, therefore due publicity of the tender notice is required. It is pointed out that for

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 7 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

publication the matter has to be routed through Commissioner, Public Relations that are the arrangement made by the State in the cases like the one. It is for the State to see that the publication should be made in the newspapers. The State shall see that there may be proper publication. The State has its ways and means and the authorities may make alternate arrangements for publication in suitable cases. Due publicity will certainly make it competitive and it is equally safeguards the interest of getting more Revenue.

Having considered the facts and circumstances, and the material available on record, in the opinion of this Court it would be just and proper to issue a direction that fresh tender be invited by the concerned Excise Authority in accordance with law by proper publication, giving full opportunity to those who wants to participate, in order to develop healthy competition. If any difficulty is found in getting the tender notice published, it is open to the

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State/Commissioner/Concerned Authority to get it published urgently in newspapers to avoid any delay.

The petitioner and intervener may also participate in the fresh tender process.

Learned State counsel submits that the offer made by the highest tenderers may be allowed to be retained. It is for the State to do and pass such orders, which are permissible. So far as the Court is concerned, suffice it to say that the petitioner and intervener may participate and submit fresh tenders.

With the above observations this petition stands disposed of.

Certified copy as per Rules.

A copy of this order be supplied to the State counsel for compliance.

Sd/-
Fakhruddin
Judge

Thakur

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24/2/16